

Considerations for Action Agency making a NO EFFECT determination.

In order for an Action Agency to determine if any activities will have “no effect” on listed species and critical habitat in the action area, you must be able to make the determination for ALL species and critical habitat in the action area. If you determine that the action has no effect, there is no further Section 7 consultation with NMFS. You should document the “no effect” determination for your files in order to explain why you are not consulting with NMFS under ESA Section 7. Be sure to indicate which STRESSORS are relevant to the action under consideration. It is not necessary to notify NMFS or seek our concurrence with your no effect determination as we are not obligated to review it, concur with it, or otherwise provide comments on it. We focus our limited resources on actions that do require Section 7 consultation. This outline provides general guidance. Each action agency is responsible for ensuring that it has considered all relevant factors and circumstances, as well as the best available scientific and commercial data.

PART ONE: STRESSORS ON LISTED SPECIES

Sound

Appropriate determination if any of the following apply:

- Species Not Present where effects are likely to occur
- Sound intensity (dB) is < ambient noise
- Frequency (hertz[Hz]) outside hearing range of all listed species in action area

Habitat Structure & Disturbance

Appropriate determination if either of the following apply:

- Species Not Present where effects are likely to occur
- No change in water depth AND No change in substrate characteristics

Dredging

Appropriate determination if species are not present where effects are likely to occur

Water Quality

Appropriate determination if any of the following apply:

- Species NOT Present where effects are likely to occur
- No exposure to pollutants
- No change in water quality (temporary or permanent) including water current (speed/direction) and temperature

Prey Quantity / Quality

Appropriate determination if any of the following apply:

- Species do not occur in area where prey is likely to be affected
- Not an area used for foraging
- No change in the abundance, availability, accessibility or quality of prey and no loss of SAV or shellfish beds

Vessels

Appropriate determination if either of the following apply:

- Species NOT present in area where vessels are transiting
- No change in vessel traffic (volume, speed, travel route, etc.)

**In-water structures including
aquaculture**

Appropriate determination if listed species are NOT present in area affected by the gear

PART TWO: CRITICAL HABITAT

ATLANTIC SALMON

If action area is within Atlantic salmon CH (see 50 CFR Sec. 226.217), review Atlantic salmon CH matrix to determine which essential features are present in the action area. Then, determine if any of the activities will have “no effect” on CH. Indicate which STRESSORS are relevant to the action under consideration.

Sound

Appropriate determination if either of the following apply:

- No Essential Features Present in area affected by sound
- Sound generated by activity has no effect on fish passage because either the sound intensity (dB) is < ambient noise or frequency (hertz[Hz]) outside hearing range (source is > 1000 Hz)

Habitat Structure & Disturbance

Appropriate determination if either of the following apply:

- No Essential Features Present in action area
- Activity results in no change in substrate characteristics, depth, velocity and no change in the availability of cover or ability of a fish to pass through the action area

Dredging

Appropriate only if no Essential Features Present in action area

Water Quality

Appropriate determination if any of the following apply:

- No Essential Features Present in area where water quality will be affected
- No change in temperature, DO or pH

In-Water Structures (Including aquaculture)

Appropriate only if no Essential Features Present in action area

Prey Quantity / Quality

Appropriate if any of the following apply:

- **No Essential Features Present**
- **Not an area used for foraging**
- **No change in the abundance, availability, accessibility or quality of prey**

Native Fish Composition

Appropriate determination if the following applies:

- **No change in native fish community (i.e., no change in the abundance of native fish community, the accessibility of the habitat in the action area to them, or the ability of that habitat to support them)**

NORTH ATLANTIC RIGHT WHALES

If action area is within North Atlantic Right Whale Critical Habitat (CH) (see 81 FR 4838, January 27, 2016 determine if any aspects of the action have “no effect” on the physical or biological features of CH. The activity is only eligible for the expedited LOC program if the action area does not overlap at all with right whale CH or, if there is overlap, you have not identified any routes of effects/stressors that may affect the physical or biological features of RW CH (i.e., you can make a “no effect” determination for RW CH).

Size and Density of adult copepod patches **Appropriate determination if all of the following apply:**

- No direct or indirect removal of copepods
- No increase in temperature in action area above 21°C
- Proposed activity has no direct or indirect effect on the abundance, distribution, quality and availability of copepod patches

Physical and Oceanographic Features that aggregate copepods

Appropriate determination if the activity under consideration will have no effect on currents and circulation patterns, bathymetric features (basins, banks, and channels), oceanic fronts, density gradients, and temperature regimes in any part of the designation within the Gulf of Maine